

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

No. CR-07-00780-1 SBA

Plaintiff,

ORDER

v.

[Docket No. 17]

LINDSEY BERTELSON

Defendant.

Currently before the Court is Defendant's Motion to Correct Sentence [Docket No. 17].

On April 29, 2008, defendant was sentenced to 12 months imprisonment after pleading guilty to one count of mail fraud pursuant to 18 U.S.C. § 1341. The applicable guideline range in defendant's case was 12-18 months and defendant was sentenced to 12 months imprisonment.

In the present motion, defendant alleges that, as sentenced, she is not entitled to earn good time credit and therefore must serve the entire 12 months of her sentence. She further alleges that had she been sentenced to 12 months and one day, she would have earned good time credit and, therefore, would have had to serve less than a 12-month sentence. This issue, however, was never raised at sentencing.

Defendant now claims that her sentence was the result of an arithmetical or technical error and therefore correctable under Rule 35(a) of the Federal Rules of Criminal Procedure. Her argument appears to be that, because she was sentenced at the low end of the applicable guideline range (12 months), the Court *intended* to give defendant the lowest possible guideline sentence, and the lowest possible guideline sentence is not 12 months but rather 12 months and one day due to the impact of good time credit. Thus, defendant is essentially arguing that the Court intended to

1 sentence her to 12 months and one day but inadvertently sentenced her to 12 months. Therefore,
2 defendant contends that her sentence was the result of an arithmetic, technical or other clear error
3 pursuant to Rule 35(a).

4 Rule 35(a) of the Federal Rules of Criminal Procedure provides that "[w]ithin 7 days after
5 sentencing, the court may correct a sentence that resulted from arithmetical, technical, or other clear
6 error." Fed. R. Crim. P. 35(a). Rule 35(a)'s authorization to a court to reduce a sentence for
7 arithmetical, technical, or other clear error, however, is to be construed very narrowly. *Id.* Advisory
8 Committee's Note.

9 In her motion, defendant *assumes* that the Court intended to sentence her to the lowest
10 possible guideline sentence. However, there is actually nothing in the record to establish this and
11 the issue of good time credit was never raised at sentencing. Had defendant raised the issue of good
12 time credit at sentencing, the Court would certainly have considered defendant's request. But, this
13 does not mean that the Court's sentence was an error. Rather, defendant simply failed to raise an
14 issue pertinent to sentencing and the Court therefore never had an opportunity to consider it. While
15 the Court appreciates defendant's argument, she should have raised it at sentencing. Rule 35(a) does
16 not authorize a court to reconsider issues such as the application of the sentencing guidelines after
17 sentencing or for the court simply to change its mind about the appropriateness of the sentence. *Id.*;
18 *United States v. Kieffer*, 257 Fed. Appx. 378 (2d Cir. 2007). Accordingly, defendant's motion is
19 DENIED.

20 IT IS SO ORDERED.

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22 Dated: 5/8/08

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SAUNDRA BROWN ARMSTRONG
United States District Judge